IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1069 OF 2006

Ramchandra Ganpat Gole .. Appellant.
Vs.
Jayram Laxman Kedari .. Respondent.

WITH

SECOND APPEAL NO.1070 OF 2006
WITH
CIVIL APPLICATION NO.1809 OF 2006

Ramchandra Ganpat Gole .. Appellant.
Vs.
Gajanan Laxman Kedari .. Respondent.

Ms.Gauri Godse for the appellants.
Ms.Archana Kalolgi for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 17TH OCTOBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. These two appeals arise from two separate suits. The first suit was filed by the appellant-Ramchandra bearing regular civil suit no.38 of 1993, while second suit bearing regular civil suit no.53 of 1993 was filed by Gajanan Laxman Kedari. The suit filed by Ramchandra was for declaration of title and injunction, while the suit filed by Gajanan was for injunction and possession. Both the courts below in both these suits have held that the appellant is not in a lawful possession of the suit property referrable to valid title on the date

of the suit and that he dispossessed the respondent after obtaining the order of injunction. Insofar as claim of Gajanan based on the Will is concerned, both the courts have held that the deceased - Appa, original owner of the suit properties had bequeathed the suit property to Gajanan. Ms.Godse, learned counsel for the appellants assailed the judments of the courts below on two grounds. Firstly, that there is sufficient material on record to establish that the appellant is the heir and legal representative of Appa and he has succeeded the suit properties after the death of Appa, who died on 30.6.1993. The findings of the courts below, according to Ms.Godse, on this point are perverse. Secondly, she submitted that the Will executed by Appa in favour of Gajanan since was without prior permission of the competent authority under the provisions of B.T.& A.L. Gajanan cannot claim any right over the suit properties. She submitted that survey No.40/5, one of the suit properties, was tenanted property in which Appa a was protected tenant.

3. I perused the judgments of the courts below and more particularly paragraphs 9, 10 and 11 of the appellate court in civil appeal Nos.56 and 57 of 2003 wherein the appellate court after having taken into

consideration the documentary evidence on record has recorded a categoric finding that the appellant has failed to prove that he is the heir and legal representative of Appa. No cogent evidence was brought on record by the appellant to establish his relationship with Appa. The courts below have rightly held that there is no material on record to show that he was nephew of deceased Appa. I find no reason to interfere with the findings of fact on this point.

4. Insofar as the second submission is concerned, in my opinion, the appellate court in paragraph 14 has held that the testamentary deposition cannot be held to be transfer of property as it stood barred by section 43 of the B.T.& A.L. Act. The appellate court after having considered the judgment relied upon by Ms.Godse in **Basantibai Vs. Narayan 1996(1) Mh.L.J.598** has rightly observed that the appellant cannot be allowed to agitate legality of the Will in the present case on the ground that it could not have been made in the face of the bar created by section 43 of the said Act. In the circumstances I find no merit in these appeals. The appeals are accordingly dismissed. Consequently, the civil application also stands disposed of.

(D.B.BHOSALE, J.)